

## REMARKS

This is a full and timely response to the outstanding Office Action mailed June 6, 2008. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

Upon entry of this Amendment, claims 1-19 are pending in the present application. Claims 1 and 10 are currently amended. Claims 11-19 are newly added. The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims. Applicants believe that no new matter has been added and that a new search is not necessary.

### **Rejection on the Ground of Nonstatutory Obviousness-Type Double Patenting**

Claims 1-10 have been provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims in Application No. 10/583,810.

Although Applicants traverse the rejection, a Terminal Disclaimer is filed herewith in compliance with 37 C.F.R. §1.321(c) to overcome the provisional double patenting rejections (Appendix A). Accordingly, Applicants respectfully request that the double patenting rejection to pending claims 1-10 be withdrawn. In filing the Terminal Disclaimers, Applicants rely upon the rulings of the Federal Circuit that the filing of such a Terminal Disclaimer does not act as an admission, acquiescence, or estoppel on the merits of the obviousness issue. "In legal principal, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." *Quad Environmental Tech v. Union Sanitary*, 946 F.2d 870, 874 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

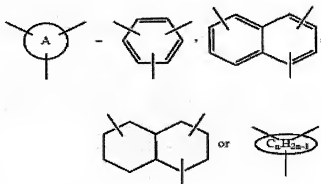
### Claim 1

Claim 1 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,579,936 in view of U.S. Patent 5,608,032, or further in view of U.S. 5,438,878. Amended claim 1 is shown below:

1. Polyester resin comprising comprising a polyester resin comprising at least 85 Mol-% of polyethylene terephthalate and at least 0.01 Mol-%, but not more than 5.00 Mol-% of units of the formula (I)



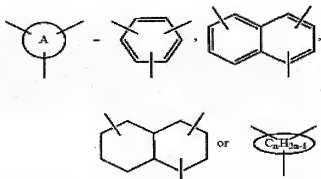
wherein



wherein n is an integer from 3 to 10 and wherein  $M^+$  is an alkali metal ion, earth alkali metal ion, phosphonium ion or ammonium ion and wherein the polyester contains <5.0 wt.-% of diethylene glycol and wherein the polyester contains  $Na_2HPO_4$  in an amount such that the phosphor content is 10 to 200 ppm (based on the weight of the polyester) and wherein the polyester is either free of or does not contain more than 9 ppm of  $NaH_2PO_4$ , and wherein the intrinsic viscosity is 0.6 to 1.0.

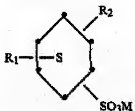
Applicants traverse each of the 103 rejections in the Office Action and submit that the rejection of claim 1 under 35 U.S.C. §103 in view of '936, '032, and '878 should be withdrawn because each, separately or in combination, do not teach, disclose, or suggest each and every feature of claim 1 above. In particular,

'936, '032, and '878, individually or in combination, do not teach, disclose, or suggest



as recited in amended claim 1.

As noted by the Office, reference '936 shows



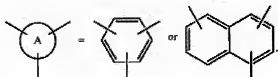
, but does not show the structures recited in claim 1. Thus, '936 does not include the elements of claim 1, and '032, and '878 do not cure this deficiency since neither include the elements of claim 1. Therefore, claim 1 is in condition for allowance.

### Claims 2-9 and 17-19

Applicants traverse the §103 rejections in the Office Action. Applicants respectfully submit that pending dependent claims 2-9 and 17-19 include every feature of independent claim 1 and that the cited references, individually or in combination, fail to teach, disclose, or suggest at least the features of claim 1. Thus, pending dependent claims 2-9 and 17-19 are also allowable over the prior art of record. In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Notwithstanding the reasons for allowance noted above, claim 2 is allowable for additional reasons. In particular, claim 2 is allowable over the cited references,

individually or in combination, because the references do not teach, suggest or disclose



as recited in claim 2. Thus, claim 2 is

in condition for allowance.

Notwithstanding the reasons for allowance noted above, claim 3 is allowable for additional reasons. In particular, claim 3 is allowable over the cited references, individually or in combination, because the references do not teach, suggest or disclose



as recited in claim 3. Thus, claim 3 is in condition for

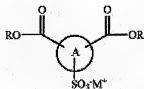
allowance.

### Claim 10

Claim 10 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,579,936 in view of U.S. Patent 5,608,032, or further in view of U.S. 5,438,878. Amended claim 10 is shown below:

10. Method of manufacturing a polyester resin according to claim 1, comprising the steps of

a) reacting terephthalic acid (TA) or C<sub>1</sub>-C<sub>4</sub>-dialkyl terephthalate; and ethylene glycol (EG); and at least 0.01, but not more than 5.00 Mol-% of a compound according to formula (II):

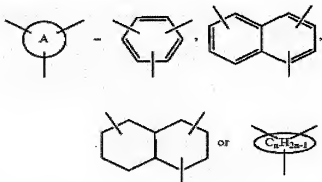


wherein R is hydrogen, a C<sub>1</sub>-C<sub>4</sub>-alkyl or a C<sub>1</sub>-C<sub>4</sub>-hydroxyalkyl and



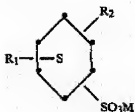
M and  
(I) and  
b) subjecting the reaction product of a) to a polycondensation  
reaction to form the polymer.

Applicants traverse each of the 103 rejections in the Office Action and submit that the rejection of claim 10 under 35 U.S.C. §103 in view of '936, '032, and '878 should be withdrawn because each, separately or in combination, do not teach, disclose, or suggest each and every feature of claim 10 above. In particular, '936, '032, and '878, individually or in combination, do not teach, disclose, or suggest



as recited in amended claim 10.

As noted by the Office, reference '936 shows

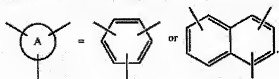


, but does not show the structures recited in claim 10. Thus, '936 does not include the elements of claim 10, and '032, and '878 do not cure this deficiency since neither include the elements of claim 10. Therefore, claim 10 is in condition for allowance.

### Claims 11-16

Applicants traverse the §103 rejections in the Office Action. Applicants respectfully submit that pending dependent claims 11-16 include every feature of independent claim 10 and that the cited references, individually or in combination, fail to teach, disclose, or suggest at least the features of claim 10. Thus, pending dependent claims 11-16 are also allowable over the prior art of record. In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Notwithstanding the reasons for allowance noted above, claim 11 is allowable for additional reasons. In particular, claim 11 is allowable over the cited references, individually or in combination, because the references do not teach, suggest or disclose



as recited in claim 11. Thus, claim 11

is in condition for allowance.

Notwithstanding the reasons for allowance noted above, claim 12 is allowable for additional reasons. In particular, claim 12 is allowable over the cited references, individually or in combination, because the references do not teach, suggest or disclose



as recited in claim 12. Thus, claim 12 is in condition

for allowance.

### **CONCLUSION**

In light of the foregoing remarks and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Further, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully Submitted,

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